

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CARL VALLIER,

Petitioner,

v.

CORCORAN PRISON, Warden,

Respondent.

Civil No. 12-2269 LAB (PCL)

**ORDER GRANTING APPLICATION
TO PROCEED IN FORMA
PAUPERIS**

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

REQUEST TO PROCEED IN FORMA PAUPERIS

Petitioner has no funds on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

FAILURE TO NAME A PROPER RESPONDENT

The Petition must be dismissed, however, because Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule

2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to name a proper respondent. *See id.*

The warden is the typical respondent. However, “the rules following section 2254 do not specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall be the state officer who has official custody of the petitioner (for example, the warden of the prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v. Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the body” if directed to do so by the Court. “Both the warden of a California prison and the Director of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d at 895.

Here, the Petition submitted to the Court is missing the first page and thus, no Respondent was named. On Petitioner’s request to proceed in forma pauperis, however, he names “Corcoran Prison” as respondent. In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of the state correctional facility in which Petitioner is presently confined or the Secretary of the California Department of Corrections and Rehabilitation. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

FAILURE TO STATE A COGNIZABLE CLAIM

Additionally, in accordance with Rule 4 of the rules governing § 2254 cases, Petitioner has failed to allege that his state court conviction or sentence violates the Constitution of the United States.

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1 Title 28, United States Code, § 2254(a), sets forth the following scope of review for
2 federal habeas corpus claims:

3 The Supreme Court, a Justice thereof, a circuit judge, or a district
4 court shall entertain an application for a writ of habeas corpus in
5 behalf of a person in custody pursuant to the judgment of a State
6 court only on the ground that he is in custody in violation of the
7 Constitution or laws or treaties of the United States.

8 28 U.S.C. § 2254(a) (emphasis added). See *Hernandez v. Ylst*, 930 F.2d 714, 719 (9th Cir.
9 1991); *Mannhalt v. Reed*, 847 F.2d 576, 579 (9th Cir. 1988); *Kealohapauole v. Shimoda*, 800
10 F.2d 1463, 1464-65 (9th Cir. 1986). Thus, to present a cognizable federal habeas corpus claim
11 under § 2254, a state prisoner must allege both that he is in custody pursuant to a “judgment of
12 a State court,” and that he is in custody in “violation of the Constitution or laws or treaties of the
13 United States.” See 28 U.S.C. § 2254(a).

14 Here, Petitioner claims that “the one and only witness against [him] was a security guard
15 who was not at the preliminary hearing” and that he is “serving time double up for a 1968 strike
16 which I’ve served time for twice already.” In no way does Petitioner claim he is “in custody in
17 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254.

18 Further, the Court notes that Petitioner cannot simply amend his Petition to state a federal
19 habeas claim and then refile the amended petition in this case. He must exhaust state judicial
20 remedies before bringing his claims via federal habeas. State prisoners who wish to challenge
21 their state court conviction must first exhaust state judicial remedies. 28 U.S.C. § 2254(b), (c);
22 *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). To exhaust state judicial remedies, a
23 California state prisoner must present the California Supreme Court with a fair opportunity to
24 rule on the merits of every issue raised in his or her federal habeas petition. See 28 U.S.C.
25 § 2254(b), (c); *Granberry*, 481 U.S. at 133-34. Moreover, to properly exhaust state court judicial
26 remedies a petitioner must allege, in state court, how one or more of his or her federal rights
27 have been violated. The Supreme Court in *Duncan v. Henry*, 513 U.S. 364 (1995) reasoned:
28 “If state courts are to be given the opportunity to correct alleged violations of prisoners’ federal
rights, they must surely be alerted to the fact that the prisoners are asserting claims under the
United States Constitution.” *Id.* at 365-66 (emphasis added). For example, “[i]f a habeas
petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due

1 process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal
2 court, but in state court.” *Id.* (emphasis added).

3 Additionally, the Court cautions Petitioner that under the Antiterrorism and Effective
4 Death Penalty Act of 1996 (Act), signed into law on April 24, 1996, a one-year period of
5 limitation shall apply to a petition for a writ of habeas corpus by a person in custody pursuant
6 to the judgment of a State court. The limitation period shall run from the latest of:

7 (A) the date on which the judgment became final by the
8 conclusion of direct review or the expiration of the time for seeking
such review;

9 (B) the date on which the impediment to filing an application
10 created by State action in violation of the Constitution or laws of the
United States is removed, if the applicant was prevented from filing
11 by such State action;

12 (C) the date on which the constitutional right asserted was
initially recognized by the Supreme Court, if the right has been
13 newly recognized by the Supreme Court and made retroactively
applicable to cases on collateral review; or

14 (D) the date on which the factual predicate of the claim or
15 claims presented could have been discovered through the exercise
of due diligence.

16 28 U.S.C. § 2244(d)(1)(A)-(D) (West Supp. 2002).

17 The Court also notes that the statute of limitations does not run while a properly filed state
18 habeas corpus petition is pending. 28 U.S.C. § 2244(d)(2); *see Nino v. Galaza*, 183 F.3d 1003,
19 1006 (9th Cir. 1999), *cert. denied*, 529 U.S. 1104 (2000). *But see Artuz v. Bennett*, 531 U.S. 4,
20 8 (2000) (holding that “an application is ‘properly filed’ when its delivery and acceptance [by
21 the appropriate court officer for placement into the record] are in compliance with the applicable
22 laws and rules governing filings.”). However, absent some other basis for tolling, the statute of
23 limitations does run while a federal habeas petition is pending. *Duncan v. Walker*, 533 U.S. 167,
24 181-82 (2001).

25 INCOMPLETE PETITION

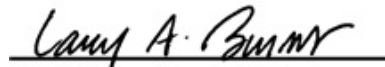
26 The Petition must also be dismissed because it is incomplete. As discussed above, the
27 Petition was submitted without the first page. It also appears to be missing pages 7-8. Without
28 the information usually provided on the first page of the form petition, it is impossible for this
Court to determine whether it has jurisdiction over this action, and whether venue is proper.

1 **CONCLUSION**

2 Based on the foregoing, the Court **GRANTS** Petitioner's request to proceed in forma
3 pauperis and **DISMISSES** the Petition without prejudice due to Petitioner's failure to name a
4 proper respondent, state a cognizable claim, and file a complete petition. To have this case
5 reopened, Petitioner must file a First Amended Petition **no later than November 26, 2012** in
6 conformance with this Order. *For Petitioner's convenience, the Clerk of Court shall attach to*
7 *this Order, a complete blank form petition.*

8 **IT IS SO ORDERED.**

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10 DATED: October 8, 2012

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12 **HONORABLE LARRY ALAN BURNS**
13 United States District Judge
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